§ 602.101 [Amended]

Par. 4. In § 602.101, paragraph (c) is amended by removing the existing entry for 1.761–2 and by adding the entry "1.761–2 * * * 1545–1338" in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–31291 Filed 12–22–94; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 31

[TD 8582]

RIN 1545–AR08

Update of Railroad Retirement Tax Act Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the Railroad Retirement Tax Act (RRTA). These regulations update the existing RRTA regulations by removing obsolete provisions and adding new provisions to reflect the statutory changes that have occurred since the publication in 1964 of the existing RRTA regulations. In addition, because Tier 1 of the RRTA mirrors the Federal Insurance Contributions Act (FICA), these regulations generally cross-reference the definition of compensation under the RRTA to the definition of wages under the FICA. The regulations provide both railroad employers and IRS personnel with the guidance necessary to comply with the law.

DATES: These regulations are effective December 23, 1994. These regulations apply for calendar years beginning after December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Jean Whalen Casey at (202) 622–6040.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1993, the IRS published in the **Federal Register** (58 FR 28366) proposed amendments to the Employment Tax Regulations (26 CFR part 31) under sections 3201 through 3231 of the Internal Revenue Code (Code).

Written comments were received from the public on the proposed regulations, and a public hearing was held on August 30, 1993. After consideration of all of the written comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The comments received focused on the definition of "employer" in § 31.3231(a)–1 and the definition of compensation in § 31.3231(e)–1.

Proposed Regulation § 31.3231(a)–1(c) describes the term "casual" as used in the phrase "casual service and the casual operation of equipment or facilities." Under the proposed regulations, the term "casual" applies, in part, whenever such service or operation is insubstantial. One commentator suggested the IRS adopt a bright line test in defining insubstantial. Specifically, the commentator suggested that service or operation of equipment or facilities in connection with the transportation of passengers or property by railroad be presumed to be insubstantial whenever less than 10% of any company's revenues, work force, or payroll are derived from, devoted to, or provided to the carrier or carriers affiliated with the company. Situations can arise where one of the factors is less than 10% while the remaining factors are greater than 10%. It is not clear that the service or operation of equipment or facilities would be insubstantial in those situations. Therefore, this suggestion was not adopted.

The proposed regulations define "compensation" under the RRTA by referencing the definition of "wages" under the FICA. One commentator suggested that this reference be deleted because the statutory language of the two statutes differs. This suggestion was not adopted. The definition of wages under the FICA refers to "all remuneration for employment" while the definition of compensation under the RRTA refers to "any money remuneration paid to an individual." The commentator stated that Congress had the opportunity to conform the language of the two definitions and has not done so. While there are historical differences between the two statutes, there are significant similarities between the RRTA and the FICA. Legislation enacted since the adoption of the existing regulations has made the RRTA Tier 1 tax identical to the FICA tax as well as conforming the Tier 1 wage ceiling to the FICA wage ceiling. Along with conforming the structure of the RRTA to parallel that of the FICA, the exclusions from the definition of compensation under the RRTA, with few exceptions, mirror the exclusions from the definition of wages under the FICA. These exclusions from compensation include non-monetary benefits such as fringe benefits, meals and lodging excludable under section 119 of the Internal Revenue Code, and employer-paid life insurance premiums for group-term life insurance under $50,000. In amending RRTA, Congress often indicated the purpose was to provide conformity to FICA. Congress has added references to FICA provisions in the RRTA definition of successor employer (section 3231(e)(2)(C)) and the rules for nonqualified deferred compensation (section 3231(e)(8)). In addition, Tier 1 benefits are designed to be equivalent to social security benefits and are subject to federal income taxation in the same manner as social security benefits. Because the two statutes are not completely identical, the language of the regulation indicates that the term compensation has the same meaning as the term wages, except as specifically limited by the Railroad Retirement Tax Act.

One commentator suggested that the presumption in § 31.3231(e)–1(a)(2) that payments made to an individual through the employer's payroll are compensation should be deleted. This is based on the removal of this language from the Internal Revenue Code in 1983. The commentator also suggested that § 31.3231(e)–1(a)(4) providing that compensation includes payments for time lost should be deleted. These provisions are included in the existing regulations. The Railroad Retirement Solvency Act of 1983 significantly amended the definition of compensation, changing the inclusion of items to a "paid basis" from an "earned basis" and providing the present two tiered structure. Prior to the 1983 Act, statutory language specifically provided for the presumption and the inclusion of payments for time lost. In amending the definition of compensation, the 1983 Act did not reenact the statutory language. The legislative history does not indicate that Congress intended to exclude payments for time lost from compensation or negate the presumption that payments made through an employer's payroll are compensation. Therefore, these suggestions were not adopted.

A suggestion was also made to delete the reference to "earned" in proposed § 31.3231(e)–1(a)(3). Because section 3231 was amended to shift the focus from when compensation was earned to when compensation was paid, this suggestion has been adopted.

Finally, one commentator suggested adding a reference that compensation does not include supplemental unemployment compensation benefits (SUB-pay). There is no specific statutory

exception from compensation for SUB-pay. Rather, a series of revenue rulings provides a limited exception from the definition of wages for purposes of FICA and FUTA for certain payments made upon an employee's involuntary separation from the employer's service, but only if the payments are designed to supplement the receipt of unemployment compensation. Rev. Rul. 56–249, 1956–1 C.B. 488, the first of many rulings in this area, summarized eight features of a SUB-pay plan whose payments qualified for exclusion from wage treatment. Rev. Rul. 90–72, 1990–2 C.B. 211, specifically provides that because the definition of compensation for RRTA purposes is similar to the definition of wages for FICA purposes, the same conclusions with respect to SUB-pay plans applies to RRTA. Rev. Rul. 90–72 revoked in part an earlier revenue ruling which held that SUB-pay does not have to be tied to state unemployment benefits in order to be excluded from treatment as wages. Because payments from a SUB-pay plan are not automatically excluded from the definition of compensation this suggestion was not adopted.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jean Whalen Casey of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.3121(a)–1 is amended as follows:

1. Paragraph (a) is redesignated as (a)(1).

2. Paragraph (a)(2) is added to read as follows:

§ 31.3121(a)–1 Wages.

(a) * * *

(2) The term *compensation* as used in section 3231(e) of the Internal Revenue Code has the same meaning as the term *wages* as used in this section, determined without regard to section 3121(b)(9), except as specifically limited by the Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code) or regulation. The Commissioner may provide any additional guidance that may be necessary or appropriate in applying the definitions of sections 3121(a) and 3231(e).

* * * * *

Par. 3. Sections 31.3201–1 and 31.3201–2 are revised to read as follows:

§ 31.3201–1 Measure of employee tax.

The employee tax is measured by the amount of compensation received for services rendered as an employee. For provisions relating to compensation, see § 31.3231(e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax, see paragraphs (b)(1) and (2) of § 31.3231(e)–1.

§ 31.3201–2 Rates and computation of employee tax.

(a) *Rates*—(1)(i) *Tier 1 tax.* The Tier 1 employee tax rate equals the sum of the tax rates in effect under section 3101(a) relating to old-age, survivors, and disability insurance, and section 3101(b), relating to hospital insurance. The Tier 1 employee tax rate is applied to compensation up to the contribution base described in section 3231(e)(2)(B)(i). The contribution base is determined under section 230 of the Social Security Act and is identical to the old-age, survivors, and disability insurance wage base and the hospital insurance wage base, respectively, under the Federal Insurance Contributions Act.

(ii) *Example.* The rule in paragraph (a)(1)(i) of this section is illustrated by the following example.

Example. A received compensation of $60,000 in 1992. The section 3101(a) rate of 6.2 percent would be applied to *A*'s compensation up to $55,500, the applicable contribution base for 1992. The section 3101(b) rate of 1.45 percent would be applied to the entire $60,000 of *A*'s compensation because the applicable contribution base for 1992 is $130,200.

(2)(i) *Tier 2 tax.* The Tier 2 employee tax rate equals the percentage set forth in section 3201(b) of the Code. This rate is applied to compensation up to the contribution base described in section 3231(e)(2)(B)(ii).

(ii) *Example.* The rule in paragraph (a)(2)(i) of this section is illustrated by the following example.

Example. A received compensation of $60,000 in 1992. The section 3201(b) rate of 4.90 percent would be applied to *A*'s compensation up to $41,400, the applicable contribution base for 1992.

(b)(1) *Computation.* The employee tax is computed by multiplying the amount of the employee's compensation with respect to which the employee tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section. The applicable rate is the rate in effect when the compensation is received by the employee. For rules relating to the time of receipt, see § 31.3121(a)–2 (a) and (b).

(2) *Example.* The rule in paragraph (b)(1) of this section is illustrated by the following example.

Example. In 1990, employee *A* received compensation of $1,000 as remuneration for services performed for employer *B* in 1989. The employee tax is payable at the rate of 12.55 percent (7.65 percent plus 4.90 percent) in effect for 1990 (the year the compensation was received), and not the 12.41 percent rate (7.51 percent plus 4.90 percent) in effect for 1989 (the year the services were performed).

Par. 4. Section 31.3202–1 is amended by revising paragraphs (b) and (f) to read as follows:

§ 31.3202–1 Collection of, and liability for, employee tax.

* * * * *

(b) *Collection; payments by two or more employers in excess of annual compensation limitation.* For rules relating to payments by two or more employers in excess of the annual compensation limitation see § 31.3121(a)(1)–1.

* * * * *

(f) *Concurrent employment.* If two or more related corporations who are rail

employers concurrently employ the same individual and compensate that individual through a common paymaster, which is one of the related corporations employing the individual, see § 31.3121(s)–1.

Par. 5. Sections 31.3211–1 and 31.3211–2 are revised to read as follows:

§ 31.3211–1 Measure of employee representative tax.

The employee representative tax is measured by the amount of compensation received for services rendered as an employee representative. For provisions relating to compensation, see § 31.3231(e)–1.

§ 31.3211–2 Rates and computation of employee representative tax.

(a) *Rates*—(1)(i) *Tier 1 tax.* The Tier 1 employee representative tax rate equals the sum of the tax rates in effect under sections 3101(a) and 3111(a), relating to the employee and the employer tax for old-age, survivors, and disability insurance, and sections 3101(b) and 3111(b), relating to the employee and the employer tax for hospital insurance. The Tier 1 employee representative tax rate is applied to compensation up to the contribution base described in section 3231(e)(2)(B)(i). The contribution base is determined under section 230 of the Social Security Act, and is identical to the old-age, survivors, and disability insurance wage base and the hospital insurance wage base, respectively, under the Federal Insurance Contributions Act.

(ii) *Example.* The rule in paragraph (a)(1)(i) of this section is illustrated by the following example.

Example. B, an employee representative received compensation of $60,000 in 1992. The sections 3101(a) and 3111(a) rates of 12.4 percent (6.2 percent plus 6.2 percent) would be applied to *B*'s compensation up to $55,500, the applicable contribution base for 1992. The sections 3101(b) and 3111(b) rates of 2.9 percent (1.45 percent plus 1.45 percent) would be applied to the entire $60,000 of *B*'s compensation because the applicable contribution base for 1992 is $130,200.

(2) (i) *Tier 2 tax.* The Tier 2 employee representative tax rate equals the percentage set forth in section 3211(a)(2) of the Code. This rate is applied up to the contribution base described in section 3231(e)(2)(B)(ii).

(ii) *Example.* The rule in paragraph (a)(2)(i) of this section is illustrated by the following example.

Example. B received compensation of $60,000 in 1992. The section 3211(a)(2) rate of 14.75 percent would be applied to *B*'s compensation up to $41,400, the applicable contribution base for 1992.

(3) *Supplemental Annuity Tax.* The supplemental annuity tax for each work-hour for which compensation is paid to an employee representative for services rendered as an employee representative is imposed at the same rate as the excise tax imposed on every employer under section 3221(c). See also § 31.3211–3.

(b) (1) *Computation.* The employee representative tax is computed by multiplying the amount of the employee representative's compensation with respect to which the employee representative tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section. The applicable rate is the rate in effect when the compensation is received by the employee representative. For rules relating to the time of receipt, see § 31.3121(a)–2 (a) and (b).

(2) *Example.* The rule in paragraph (b)(1) of this section is illustrated by the following example.

Example. In 1990, employee representative *B* received $1,000 as remuneration for services performed for employer *R* in 1989. The employee representative tax is payable at the rate of 30.05 percent (15.30 percent plus 14.75 percent) in effect for 1990 (the year the compensation was received), and not the 29.77 percent rate (15.02 percent plus 14.75 percent) in effect for 1989 (the year the services were performed).

(c) (1) *Rule where compensation is received both as an employee representative and employee.* The following rule applies to an individual who renders service both as an employee representative and as an employee. The employee representative tax is imposed on compensation received as an employee representative under the rules described in § 31.3211–2. The employee tax is imposed on compensation received as an employee under the rules described in § 31.3201–2. However, if the total compensation received is greater than the applicable contribution base, the employee representative tax is imposed on the amount equal to the contribution base less the amount received for services rendered as an employee.

(2) *Example.* The rule in paragraph (c)(1) of this section is illustrated by the following example.

Example. C performed services both as an employee and an employee representative in 1992. *C* received compensation of $40,000 as an employee and $20,000 as an employee representative. *C*'s entire compensation of $40,000 is subject to tax under the rules described in § 31.3201–2. The amount of employee representative compensation subject to the section 3101(a) and the section 3111(a) rate is $15,500 ($55,500 – $40,000). The entire $20,000 is subject to the sections 3101(b) and 3111(b) rates since the combined compensation is less than $130,200, the applicable contribution base for 1992. The amount of the employee representative compensation subject to the section 3211(a)(2) rate is $1,400 ($41,400 – $40,000).

Par. 6. Section 31.3221–1 is amended as follows:

1. Paragraphs (a) and (b) are revised.
2. Paragraph (d) is removed.
3. The revisions read as follows:

§ 31.3221–1 Measure of employer tax.

(a) *General Rule*—The employer tax is measured by the amount of compensation paid by an employer to its employees. For provisions relating to compensation, see § 31.3231(e)-1. For provisions relating to the circumstances under which certain compensation is to be disregarded for purposes of determining the employer tax, see paragraphs (b) (1) and (2) of § 31.3231(e)–1.

(b) *Payments by two or more employers in excess of annual compensation limitation.* For rules relating to payments by two or more employers in excess of the annual compensation limitation, see § 31.3121(a)(1)–1.

* * * * *

Par. 7. Section 31.3221–2 is revised to read as follows:

§ 31.3221–2 Rates and computation of employer tax.

(a) *Rates*—(1)(i) *Tier 1 tax.* The Tier 1 employer tax rate equals the sum of the tax rates in effect under section 3111(a) relating to old-age, survivors, and disability insurance, and section 3111(b) relating to hospital insurance. The Tier 1 employer tax rate is applied to compensation up to the contribution base described in section 3231(e)(2)(B)(i). The contribution base is determined under section 230 of the Social Security Act and is identical to the old-age, survivors, and disability insurance wage base and the hospital insurance wage base, respectively, under the Federal Insurance Contributions Act.

(ii) *Example.* The rule in paragraph (a)(1)(i) of this section is illustrated by the following example.

Example. R's employee, *A*, received compensation of $60,000 in 1992. The section 3111(a) rate of 6.2 percent would be applied to *A*'s compensation up to $55,500, the applicable contribution base for 1992. The section 3111(b) rate of 1.45 percent would be applied to the entire $60,000 of *A*'s compensation because the applicable contribution base for 1992 is $130,200.

(2)(i) *Tier 2 tax.* The Tier 2 employer tax rate equals the percentage set forth in section 3221(b) of the Internal Revenue Code. This rate is applied up

to the contribution base described in section 3231(e)(2)(B)(ii).

(ii) *Example.* The rule in paragraph (a)(2)(i) of this section is illustrated by the following example.

Example. *R*'s employee, *A*, received compensation of $60,000 in 1992. The section 3221(b) rate of 16.10 percent would be applied to *A*'s compensation up to $41,400, the applicable contribution base for 1992.

(3) *Supplemental Annuity Tax.* The supplemental annuity tax for each work-hour for which compensation is paid by an employer for services rendered during any calendar quarter by employees is imposed at the tax rate determined each calendar quarter by the Railroad Retirement Board. See also § 31.3221–3.

(b)(1) *Computation.* The employer tax is computed by multiplying the amount of the compensation with respect to which the employer tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section. The applicable rate is the rate in effect at the time the compensation is paid. For rules relating to the time of payment, see § 31.3121(a)–2(a) and (b).

(2) *Example.* The rule in paragraph (b)(1) of this section is illustrated by the following example.

Example. In 1990, *R*'s employee *A* received $1,000 as remuneration for services performed for *R* in 1989. The employer tax is payable at the rate of 23.75 percent (7.65 percent plus 16.10 percent) in effect for 1990 (the year the compensation was received) and not the 23.61 percent rate (7.51 percent plus 16.10 percent) in effect for 1989 (the year the services were performed).

Par. 8. Section 31.3231(a)–1 is amended as follows:

1. Paragraph (a)(1) is revised.
2. Paragraphs (c) and (d) are redesignated as (d) and (e).
3. Paragraphs (c) and (f) are added.
4. The revisions and additions read as follows:

§ 31.3231(a)–1 Who are employers.

(a) * * *

(1) Any carrier, that is, any express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49;

* * * * *

(c) As used in paragraph (a)(2) of this section, the term *casual* applies when the service rendered or the operation of equipment or facilities by a controlled company or person in connection with the transportation of passengers or property by railroad is so irregular or infrequent as to afford no substantial basis for an inference that such service or operation will be repeated, or whenever such service or operation is insubstantial.

* * * * *

(f) Any company that is described in paragraph (a)(2) of this section is an employer under section 3231. In certain cases, based on all the facts and circumstances, it may be appropriate to segregate those businesses engaged in rail services and therefore subject to the Railroad Retirement Tax Act from those businesses engaged exclusively in nonrail services and therefore not subject to the Railroad Retirement Tax Act. The factors considered are set forth in guidance published by the Internal Revenue Service.

Par. 9. Section 31.3231(e)–1 is revised to read as follows:

§ 31.3231(e)–1 Compensation.

(a) *Definition*—(1) The term *compensation* has the same meaning as the term *wages* in section 3121(a), determined without regard to section 3121(b)(9), except as specifically limited by the Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code) or regulation. The Commissioner may provide any additional guidance that may be necessary or appropriate in applying the definitions of sections 3121(a) and 3231(e).

(2) A payment made by an employer to an individual through the employer's payroll is presumed, in the absence of evidence to the contrary, to be compensation for services rendered as an employee of the employer. Likewise, a payment made by an employee organization to an employee representative through the organization's payroll is presumed, in the absence of evidence to the contrary, to be compensation for services rendered by the employee representative as such. For rules regarding the treatment of deductions by an employer from remuneration of an employee, see § 31.3123–1.

(3) The term *compensation* is not confined to amounts paid for active service, but includes amounts paid for an identifiable period during which the employee is absent from the active service of the employer and, in the case of an employee representative, amounts paid for an identifiable period during which the employee representative is absent from the active service of the employee organization.

(4) Compensation includes amounts paid to an employee for loss of earnings during an identifiable period as the result of the displacement of the employee to a less remunerative position or occupation as well as pay for time lost.

(5) For rules regarding the treatment of reimbursement and other expense allowance amounts, see § 31.3121(a)–3. For rules regarding the inclusion of fringe benefits in compensation, see § 31.3121(a)–1T.

(b) *Special Rules.* (1) If the amount of compensation earned in any calendar month by an individual as an employee in the service of a local lodge or division of a railway-labor-organization employer is less than $25, the amount is disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221.

(2) Compensation for service as a delegate to a national or international convention of a railway-labor-organization employer is disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221 if the individual rendering the service has not previously rendered service, other than as a delegate, which may be included in the individual's years of service for purposes of the Railroad Retirement Act.

(3) For special provisions relating to the compensation of certain general chairs or assistant general chairs of a general committee of a railway-labor-organization employer, see paragraph (c)(3) of § 31.3231(b)–1.

Par. 10. Section 31.3231(e)–2 is added to read as follows:

§ 31.3231(e)–2 Contribution base.

The term compensation does not include any remuneration paid during any calendar year by an employer to an employee for services rendered in excess of the applicable contribution base. For rules applying this provision, see § 31.3121(a)(1)–1

§§ 31.3231(e)–2T and 31.3231(e)–3 [Removed]

Par. 11. Sections 31.3231(e)–2T and 31.3231(e)–3 are [Removed]

Margaret Milner Richardson,

Commissioner of Internal Revenue

Approved November 28, 1994

Leslie Samuels,

Assistant Secretary of the Treasury

[FR Doc 94–31426 Filed 12–22–94, 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 301

[TD 8583]

RIN 1545–AM66

Agreements for Payment of Tax Liabilities in Installments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding agreements for the payment of federal tax liabilities in installments under section 6159 of the Internal Revenue Code of 1986. These regulations reflect changes to the law made by section 6234 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. 100–647, 102 Stat. 3573), which authorizes the use of written installment agreements if the Secretary determines that an installment agreement will facilitate collection of federal tax liabilities. These regulations affect persons who wish to enter into agreements to pay their tax liability in installments.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Kevin Connelly, (202) 622–3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1993, a notice of proposed rulemaking was published in the **Federal Register** (56 FR 63541). No public hearing was requested or held.

Written comments responding to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

An explanation of the regulations is contained in the preamble of the notice of proposed rulemaking, published in the **Federal Register** (56 FR 63541) on December 2, 1993. The following is an explanation of the comments that were received and the revisions that were made in response to the comments.

The proposed regulations authorize the IRS to alter, modify, or terminate an installment agreement if a district director, a director of a service center, or a director of a compliance center (the director) determines that the financial condition of the taxpayer has significantly improved. Two commenters have suggested amending this provision to also authorize the IRS to alter or modify an agreement if the taxpayer's financial condition has deteriorated.

The provision in the proposed regulations is intended to prohibit the IRS from amending or terminating an installment agreement unilaterally if a taxpayer's financial condition has deteriorated as long as the taxpayer continues to make timely payments. In order to preserve this prohibition and at the same time respond to the commenters' concern, a new provision has been added to the final regulations which allows the director, upon request by a taxpayer, to amend or terminate an installment agreement because of a deterioration (or other change) in the taxpayer's financial condition.

The proposed regulations require the IRS to give notice at least 30 days prior to altering, modifying, or terminating an installment agreement. One commenter has suggested that the IRS also should be required to give the taxpayer a 30-day written notification of any intent to deny an agreement and the opportunity to appeal. The Internal Revenue Code does not require the IRS to give 30 days notice of its intent to deny an installment agreement. Such a notice requirement would enable taxpayers to stop collection actions for 30 days simply by requesting an installment agreement. For these reasons, the commenters' suggestion has not been adopted.

The proposed regulations provide that a written installment agreement may take the form of a document signed by the taxpayer and the director or a written confirmation of a verbal agreement entered into by the taxpayer and the IRS. A commenter has suggested that written installment agreements should be allowed only on standardized forms such as Forms 433–D or 9465, because agreements other than those on standardized forms may cause confusion or abuse.

The IRS enters into two types of installment agreements. Written agreements on Forms 433–D, 433–G, and 2159, which are negotiated face-to-face, are generally based on an exhaustive, written financial statement, and are signed by both the taxpayer and an employee of the IRS who has "examined or approved" the agreement. Other agreements are entered into by the Automated Collection System (ACS), the Service Center Collection Branch (SCCB), or Taxpayer Services (TS) either over the telephone or in response to a letter from a taxpayer. The agreements entered into by ACS, SCCB, or TS, which are neither negotiated face-to-face nor based on an in-depth examination of the taxpayer's financial condition, are confirmed in a letter from the IRS. The confirmation letter is signed by the IRS but not by the taxpayer.

A provision requiring all written installment agreements to be on standardized forms signed by both parties would severely hamper the ability of ACS, SCCB, and TS to enter into installment agreements. The ACS, SCCB, and TS are bulk processing centers where installment agreements generally are entered into on the basis of a single contact with the taxpayer. If installment agreements entered into by ACS, SCCB, or TS had to be on standardized forms signed by both the IRS and the taxpayer, finalization of each agreement would have to be monitored by the ACS, SCCB, or TS contact employee, or by some other employee. Once an agreement were made, a confirmation letter would have to be forwarded to the taxpayer for signature. If the confirmation letter were not returned in a timely manner, the employee would have to send a follow-up letter. Once a signed letter were returned, the employee would have to associate the letter with the taxpayer's file, fill out proper paperwork, and perhaps send a final follow-up letter to the taxpayer. This would defeat the very purpose of bulk processing.

Although the agreements entered into by ACS, SCCB, and TS are not on Forms 433–D, 433–G, or 9465, the confirmation letters sent by ACS, SCCB, and TS are based on model letters drafted by the IRS for the purpose of setting forth what is expected of the taxpayer. These letters, which set forth the terms of payment and the conditions on which the agreement is based, contain essentially the same information as the installment agreement forms. Therefore, there should be little or no confusion caused by the confirmation letters.

Although a provision requiring all installment agreements to be on standardized forms has not been adopted, the final regulations have been amended to allow installment agreements to take the form of a written confirmation of an agreement proposed in writing by the taxpayer and accepted by the IRS, as well as a written confirmation of a verbal agreement entered into between the taxpayer and the IRS.

A commenter has suggested that the proposed regulations be amended to make it clear that the IRS must give a 30-day notice of an intent to alter, modify, or terminate an agreement in all cases except where collection of the liability to which the installment agreement applies is in jeopardy. This suggestion has been adopted.

It also has been suggested that the regulations should state explicitly that

during the 30-day period the taxpayer may cure a default, correct inaccurate information, or provide additional information which will generally allow continuation of the original agreement. However, the reason for requiring written notification of an intent to alter, modify, or terminate an agreement is to give taxpayers the opportunity to show that the IRS has made a mistake. For example, if the IRS intends to terminate an agreement because it believes the taxpayer has given the IRS incorrect or incomplete information, the taxpayer will have thirty days to prove to the IRS that the taxpayer's information was correct and complete. The reason for the notification is not to allow the taxpayer to cure a default by correcting inaccurate information that the taxpayer gave the IRS during negotiations for an installment agreement. The regulations have been amended to provide that upon receiving notification that the IRS intends to alter, modify, or terminate an agreement the taxpayer may provide information to show that the IRS has made a mistake.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kevin Connelly, Office of Assistant Chief Counsel (General Litigation), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6159–1 is added under the undesignated center heading "Place and Due Date for Payment of Tax" to read as follows:

§ 301.6159–1 Agreements for payment of tax liability in installments.

(a) *Authority and definition.* A district director, a director of a service center, or a director of a compliance center (the director) is authorized to enter into a written agreement with a taxpayer that allows the taxpayer to satisfy a tax liability by making scheduled periodic payments until the liability is fully paid if the director determines that such an installment agreement will facilitate the collection of the tax liability.

(b) *Acceptance, form, and term of installment agreement*—(1) (i) *Acceptance or rejection of installment agreement.* The director has the discretion to accept or reject any proposed installment agreement. As a condition to entering into an installment agreement with a taxpayer, the director may require that—

(A) The taxpayer agree to a reasonable extension of the period of limitations on collection; and

(B) The agreement contain terms and conditions that protect the interests of the government.

(ii) *Example.* The director may require that a taxpayer authorize direct debit bank transfers as the method of making installment payments under the agreement.

(2) *Form of installment agreement.* A written installment agreement may take the form of a document signed by the taxpayer and the director or a written confirmation of an agreement entered into by the taxpayer and the director that is mailed or personally delivered to the taxpayer.

(3) *Term of accepted installment agreement.* Except as otherwise provided in this section, an installment agreement is effective from the day the director signs the agreement to the day the agreement ends by its terms.

(c) *Alteration, modification, or termination of installment agreements by the Internal Revenue Service*—(1) *Inadequate information or jeopardy* The director may terminate an installment agreement if—

(i) The director determines that the taxpayer or the taxpayer's representative has provided to the Internal Revenue Service information that is inaccurate or incomplete in any material respect in connection with the granting of the installment agreement; or

(ii) The director determines that collection of any tax liability to which the installment agreement applies is in jeopardy.

(2) *Subsequent change in financial condition, failure to timely pay an installment or another Federal tax liability, or failure to provide requested financial information.* The director may alter, modify, or terminate the terms of an installment agreement if—

(i) The director determines that the financial condition of a taxpayer that is a party to the installment agreement has significantly improved; or

(ii) The taxpayer that is a party to the installment agreement fails—

(A) To timely pay any installment in accordance with the terms of the installment agreement;

(B) To pay any other Federal tax liability when the liability becomes due; or

(C) To provide updated financial information requested by the director.

(3) *Request by taxpayer.* Upon request by a taxpayer that is a party to the installment agreement, the director may alter, modify, or terminate the terms of an installment agreement if the director determines that the financial condition of the taxpayer has significantly changed.

(4) *Notice.* Unless the director determines that collection of the tax is in jeopardy, the director will notify the taxpayer in writing at least 30 days before altering, modifying, or terminating an installment agreement pursuant to paragraph (c)(1) or (2) of this section. A notice provided pursuant to this paragraph must briefly describe the reason for the intended alteration, modification, or termination. Upon receiving notice, the taxpayer may provide information showing that the reason for the intended alteration, modification, or termination is incorrect.

(d) *Actions by the Internal Revenue Service during the term of the installment agreement.* Except as otherwise provided by the installment agreement, during the term of the agreement the director may take actions to protect the interests of the government with regard to the unpaid balance of the tax liability to which the installment agreement applies (other than actions pursuant to subchapter D of chapter 64 of subtitle F of the Internal Revenue Code against a person that is a party to the agreement), including any actions enumerated in the agreement. The actions include, for example—

(1) Requesting updated financial information from any party to the agreement;

(2) Conducting further investigations (including the issuance and enforcement of summonses) in connection with the tax liability to which the installment agreement applies;

(3) Filing or refiling notices of federal tax lien; and

(4) Taking collection action against any person who is not a party to the agreement but who is liable for the tax to which the agreement applies.

(e) *Termination.* If an installment agreement is terminated by the director, the director may pursue collection of the unpaid balance of the tax liability.

(f) *Cross-reference.* Pursuant to section 6601(b)(1), the last day prescribed for payment is determined without regard to any installment agreement, including for purposes of computing penalties and interest provided by the Internal Revenue Code.

(g) *Effective date.* This section is effective December 23, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 28, 1994.

Leslie Samuels,

Assistant Secretary of Treasury.

[FR Doc. 94-31425 Filed 12-22-94; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of extension to timetable for enactment of required program amendments.

SUMMARY: OSM is announcing the Director's decision to extend time frames for the State of Wyoming to enact required program amendments to its permanent regulatory program (hereinafter referred to as the Wyoming program) under the Surface Mining Control and Reclamation Act. OSM did not approve Wyoming's previously proposed amendment to revise and add rules and statutes pertaining to definitions and revegetation success standards in the January 24, 1994, **Federal Register** (59 FR 3521). In that decision OSM required Wyoming to submit proposed program amendments to these statutes and rules by March 25, 1994.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15 and 950.16.

II. Submission of Extension Request

By letter dated February 28, 1994, Wyoming submitted, consistent with the requirements at 30 CFR 732.17(f)(1), a description of a proposed amendment and a timetable for its enactment. The proposed timetable in the submission provided that Wyoming would have until the end of calendar year 1994 to complete the enactment of the proposed amendment (Administrative Record No. WY-26-1). In the letter, Wyoming notified OSM that the unusually lengthy timetable was needed to complete rulemaking regarding the required State program amendments at 30 CFR 950.16 (bb) through (gg). Since its February 28 submission of the proposed amendment and timetable for its enactment, Wyoming has been successful in drafting and receiving legislature approval of the required statutory changes as described at 30 CFR 950.16 (bb), (cc), (dd), (ee), and (ff). The statutory changes were signed by the Governor and filed with the Secretary of State on March 16, 1994. Wyoming, in its February 28 letter, asserts that it has been in "negotiated rule making" with all interested parties, including representatives from State, coal industry, and environmental groups, regarding the rule (non-statutory) portions of the required amendments that address specific shrub density standards for reclamation. Wyoming asserts that the "negotiated rule making" process, and the subsequent formal rulemaking process, are the reasons for the lengthy timetable in this submission.

OSM published a notice, in the March 21, 1994, **Federal Register** (59 FR 13286), announcing receipt of the Wyoming's February 28, 1994, letter and in the same notice requested public comment as to whether the proposed timetable should be approved. The public comment period closed on April 20, 1994.

By letter dated September 1, 1994, (Administrative Record No. WY-26-7), Wyoming submitted a request for additional time to complete rulemaking regarding the required State program amendments. This request would delay the resubmittal date of March 25, 1994, until November 1995. Wyoming informed OSM that, since the time of the initial submission, its Attorney General's Office had identified conflicts between the proposed statutes and "negotiated" rules and existing statutes and rules. This conflict, asserted Wyoming, had prohibited the State from proceeding with its formal rulemaking. Wyoming further asserted that statute changes that would eliminate the conflicts and allow Wyoming to proceed with formal rulemaking are currently being considered by the Wyoming Mining and Mineral Legislative committee. The statute changes cannot be considered by the entire Wyoming legislature, asserted Wyoming, until the State of Wyoming's next legislative session beginning in January 1995. The formal rulemaking, asserted Wyoming, could only proceed after successful legislative action and the Governor's approval of the statute changes.

OSM published a notice in the September 20, 1994, **Federal Register** (50 FR 48192), announcing receipt of the timetable extension request and in the same notice reopened the public comment period requesting written comments on the proposed request. The public comment period closed on October 5, 1994.

III. Director's Findings

Set forth below, pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201-1328 (SMCRA) and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed timetable for enactment submitted on February 28, 1994, and the subsequent request to extend that timetable submitted on September 1, 1994.

By letter submitted February 28, 1994, Wyoming proposed a timetable for enactment of required program amendments at 30 CFR 950.16 (bb) through (gg). That timetable extended until the end of calendar year 1994. The length of the timetable, according to Wyoming, resulted from a time consuming "negotiated rulemaking"

that the State was conducting in cooperation with State, coal industry, and environmental groups.

By its letter dated September 1, 1994, Wyoming requested an extension to the timetable for enactment of the required program amendments at 30 CFR 950.16 (bb) through (gg). The extension, asserted Wyoming, was needed to allow the State Legislature time to change existing statutes that conflicted with the proposed rules resulting from Wyoming's "negotiated rulemaking" effort with State, coal industry, and environmental groups. Wyoming informed OSM that, at the conclusion of the legislative session, the formal rulemaking process would proceed and that Wyoming expected to enact the 1994 statute changes, the revised rules, and any additional changes to the statutes that might be required to satisfy OSM's required program amendments at 30 CFR 950.16 (bb) through (gg). Wyoming informed OSM that the "negotiated rulemaking" with State, coal industry, and environmental groups referred to in its February 28, 1994, letter had been completed and that the extension to its original timetable was needed to implement the results of that rulemaking.

The required amendments concern Wyoming Statute (W.S.) 35–11–103(e)(xxviii) definition of "Agricultural lands"; W.S. 35–11–103(e)(xxix) definition of "Critical habitat"; W.S. 35–11–103(e)(xxx) definition of "Important habitat or critical habitat"; W.S. 35–11–402(b) provisions that direct Wyoming to use specific statutory definitions; W.S. 35–11–402(c) grazingland reclamation success standards; and the Department of Environmental Quality—Land Quality Division (DEQ/LQD) Rules at Chapter IV, Section 2(d)(x)(E) and Appendix A, pertaining to revegetation success standards for shrubs, as discussed in detail in the January 24, 1994, **Federal Register** (59 FR 3521).

OSM Directive REG–5 (Processing of Proposed State Regulatory Programs, Amendments and Part 732 Notifications) provides several factors to be considered in reviewing a proposed timetable for enactment of a required amendment or a subsequent proposed change to a timetable for enactment of a required amendment. These factors include: (1) The State's amendment process and constraints imposed by the State administrative and legislative rulemaking requirements, schedules and procedures; (2) the criticality of the amendment and/or portion of the State program to be amended, including any potential impacts on public health and safety or the environment; (3) the suitability of State promulgation of emergency regulations when the need for a program amendment is immediate; (4) the complexity of the amendment's subject matter and the nature of the change to be made, i.e., does the section of the program being amended "stand alone," or will change (or lack thereof) affect multiple sections of the State's program; (5) State workload factors; and (6) the possibility of combination with other amendments in related subject areas which are already scheduled under an improved timetable for enactment.

Factor 1

Wyoming's rulemaking process is quite complex and time consuming. In addition, Wyoming's administrative and legislative rulemaking requirements, schedules, and procedures are quite constraining. In Wyoming, the following steps are required for promulgation of a rule change:

(1) DEQ prepares draft rule;
(2) DEQ presents draft rule to an Advisory Board;
(3) DEQ modifies draft rule if required by the Advisory Board;
(4) DEQ requests concurrence from the Governor and Attorney General (AG) to proceed with adoption of draft rule;
(5) DEQ receive concurrence from Governor and AG;
(6) DEQ modifies draft rule if required by Governor and/or the AG;
(7) DEQ sends copies of draft rule to the Environmental Quality Council (EQC) with request for a hearing;
(8) Public notice of the hearing is published and a 45 day comment period on the draft rule occurs before EQC hearing;
(9) Comments on draft rule are analyzed by DEQ and DEQ modifies draft rule, if needed;
(10) EQC conducts hearing and decides to reject, adopt or modify draft rule;
(11) The Land Quality Division (LQD) submits EQC's decision to the AG and Legislative Service Office (LSO) within 10 days following announcement of decision of EQC;
(12) Within 30 days of decision, EQC issues a statement of reasons for overruling any public comment objections, if applicable;
(13) AG, with LSO concurrence, submits draft rule to Governor for approval; and,
(14) If Governor approves draft rule, the draft rule is forwarded to the Secretary of State's Office, within 60 days of approval, for filing.

In this instance, Wyoming asserts that the State rulemaking process has been stalled after the AG's office determination that the proposed, negotiated rules are in conflict with existing Wyoming Statute (W.S.) 35–11–402 (b) and (c). These statutes address consultation and approval requirements by State wildlife agencies. Wyoming State law prohibits Wyoming from promulgating rules that are in direct conflict with existing statutes. Thus, Wyoming's rulemaking process cannot proceed until the statutes are changed in the next legislative session. This would extend the timetable for the enactment of this amendment package to as late as November 1995, according to Wyoming.

Factor 2

The proposed amendment does not appear to present a potential impact to public health and safety. However, the proposed amendment does impact the environment because it concerns a revegetation success standard that is part of Wyoming's existing approved program and that has been determined to be less effective than the Federal program requirements. The State has already repealed portions of the statutes, negotiated proposed rules, and drafted statutory changes to resolve conflicts between those statutes and rules and the existing statutes. Thus, it is apparent that the State has determined these required amendments to be critical and is correcting them as expeditiously as possible.

Factor 3

The proposed amendment does not qualify as an emergency and it does not present potential impacts to public health and safety.

Factor 4

The complexity of the shrub reclamation amendment is evident by the divergent professional opinions regarding the appropriate minimum stocking rate and planting arrangements. The proposed change will affect multiple sections of the State's program concerning reclamation requirements.

Factor 5

The State has not shown that workload is a factor in considering this proposed extension.

Factor 6

The required program amendments at 30 CFR 950.16 (bb) through (ff) appear to have been addressed in the last Wyoming legislative session. The remaining required program amendment at 30 CFR 950.16(gg) is in "negotiated rulemaking," which will be followed by formal rulemaking and promulgation. Wyoming has requested that 30 CFR 950.16 (bb) through (gg) be submitted in one amendment package due to relationship of the subject matter. OSM agrees with the State on this approach.

Based on review of the above factors, the Director is approving Wyoming's February 28, 1994, proposed timetable for enactment, as revised by Wyoming's September 1, 1994, request for extension of that timetable. The timetable, as

revised, will allow Wyoming to enact the required program amendments specified at 30 CFR 950.16 (bb) through (gg). The timetable, as revised, extends through November 30, 1995. OSM has determined that this timetable will provide Wyoming the necessary time to allow for required legislative changes and public participation in their formal rulemaking process. OSM will monitor Wyoming's progress. Should the process break down and prohibit Wyoming from proceeding with the promulgation of the required program amendments within the time frame proposed in this rulemaking action. OSM will take immediate and appropriate action.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments on the initial proposed timetable and the request to extend the proposed timetable. Written comments were received during both comment periods from the National Wildlife Federation (NWF), the Wyoming Wildlife Federation (WWF), and the Wyoming Outdoor Council (WOC) in letters dated April 19, 1994, and October 4, 1994, (Administrative Records Nos. WY–26–03 and WY–26–09). In both letters, the commenters collectively expressed concerns that the proposed extension is in violation of the regulations implementing SMCRA, questioned the 60-day time frame for renegotiating "minor changes to the proposed shrub density rule in response to the adopted legislation," and had concern with the unexplained additional 60–90 days to submit the proposed rules to OSM after the Environmental Quality Council's approval.

In the January 24, 1994, **Federal Register**, OSM did not approve a previously submitted proposed amendment from Wyoming and codified required program amendments at 30 CFR 950.16 (bb) through (gg) that were all inclusive to the proposed amendment. In accordance with 30 CFR 732.17(f)(1), the State had 60 days after notification to submit a written amendment or a description of an amendment along with a timetable for enactment. Therefore, the State's response was required by March 24, 1994. The State submitted a letter on February 28, 1994, which, by reference to an earlier, informal submittal of February 4, 1994, included a description of a proposed amendment. In addition, the February 28, 1994, letter included a proposed timetable for enactment of the proposed amendment. The proposed timetable extended through the end of calendar year 1994. In the February 28, 1994, letter, Wyoming discussed the then current "negotiated rulemaking" and the 1994 legislative action previously discussed as the reason for the unusually lengthy proposed timetable.

Thus, although characterized by the State and OSM as a "request for extension of time," Wyoming's February 28, 1994, letter, was, in fact, a description of a proposed amendment and a timetable for its enactment, submitted within the 60 day deadline at 30 CFR 732.17(f)(1).

The commenters asserted that OSM violated 30 CFR 732.17(h)(8) by allowing 60 days to submit new amendments. The Federal regulation at 30 CFR 732.17(h)(8) allows a State regulatory authority (RA) to resubmit a revised amendment within 30 days after publication of the disapproval.

As stated above, OSM did not approve the proposed amendment and required additional amendments, pursuant to the process at 30 CFR 732.17(f)(1), to remedy existing deficiencies in the Wyoming program discovered during that review. As discussed above, Wyoming complied with OSM's required amendment by submitting a description of an amendment and a timetable for its enactment within 60 days. Thus, neither OSM nor Wyoming acted inappropriately in this instance.

In stating that OSM should have given Wyoming only 30 days, rather than 60 days, in which to respond to OSM's required amendment, the commenters appear to confuse the purpose of 30 CFR 732.17(f), which allows OSM to require changes in State programs, with the purpose of 30 CFR 732.17(h)(8), which allows a State, on its own initiative, once a proposed amendment is disapproved, to submit a revised version to OSM for reconsideration. The 30 day time limit applies to voluntary submissions of revised versions of disapproved amendments under 30 CFR 732.17(h)(8). The 60 day time limit applies to mandatory submissions for changes to a State program under 30 CFR 732.17(f). Since Wyoming's February 28, 1994, submission was a response to an OSM required change to Wyoming's program, rather than a voluntary submission of a revised version of disapproved amendment, OSM applied the correct time limit in when it allowed 60 days for Wyoming to respond to the required amendment. For additional information on the purposes of 30 CFR 732.17(f) and 30 CFR 732.17(h)(8), please see the June 17, 1982, **Federal Register** (47 FR 26356, 26360–1) and the January 23, 1981, **Federal Register** (46 FR 7906).

The commenters also asserted that OSM has failed to enforce 30 CFR 732.17(f)(2) and that 30 CFR 733 proceedings (substitution Federal enforcement of a State program) should be instituted. The Federal regulations at 30 CFR 732.17(f)(2) require that if a State RA does not submit a proposed amendment or a description of an amendment along with a timetable for enactment within 60 days from receipt of notice by the Director, or does not comply with the submitted schedule, then the Director shall begin proceedings under 30 CFR part 733.

As discussed above, Wyoming's February 28, 1994, letter, which included a description of an amendment with a timetable for its enactment, satisfied the requirement at 30 CFR 732.17(f)(1), that a proposed amendment or description of amendment and timetable for enactment, be submitted within 60 days of notification of the required changes in the State program. Having met the deadline at 30 CFR 732.17(f)(1), it would be inappropriate for OSM to institute 30 CFR part 733 proceedings against Wyoming at this time.

In addition, as discussed in detail in the commenters' letter, Wyoming has gone through a negotiated rulemaking process once before which was submitted to OSM for review as a formal amendment. At the same time, legislative action created statutes that conflicted with the negotiated rules. Consequently, OSM did not approve the rules and the statutes and required the State to amend its program. It is apparent, based upon the history described by the commenters, that the State has been working on correcting this deficient portion of the program and that 30 CFR part 733 proceedings would not be appropriate while the State is working on correcting the deficiency.

Because of the 1994 legislative repeal of those portions of the conflicting statutes and results of the "negotiated rulemaking," it would appear that the State is in a position to submit an amendment that will correct this portion of its program. The proposed statute changes for the 1995 legislative session should resolve the most recently discovered statutory conflicts and thus allow completion of the formal rulemaking process. OSM believes that this is the appropriate process to assure that the deficiency identified in the required amendment is adequately remedied.

The commenters pointed out that specific portions of Wyoming's

timetable, as revised on September 1, 1994, are quite lengthy. The commenters assert that they are concerned with the 60 days the timetable allows for "minor changes to the proposed shrub density rule in response to the adopted legislation" from April through May 1995, as well as the 90 days the timetable allows, after the Environmental Quality Council (EQC) approval of the proposed rules, but before submission of the amendment package to OSM, from September through November 1995. The commenters also mentioned that Wyoming's program includes a provision allowing the EQC to meet in an emergency hearing, which would speed the rulemaking process, but that Wyoming has not pursued this option.

OSM believes the 60 days allotted for dealing with "minor changes" shows acceptable caution on the part of Wyoming. OSM understands that, if the 60 days is not needed, the state will press forward with its formal rulemaking process. Allowing 90 days to submit the negotiated rule to OSM after approval by the EQC reflects Wyoming's administrative processes and procedures. Rules must be filed with the Secretary of State within 60 days after approval by the EQC. The EQC hearings can be held at any time during the month. Therefore, Wyoming's planned September 1995 EQC hearing could take place at the beginning or end of that month. If it takes place at the end of the month, then the 60-day filing deadline may not occur until the end of November 1995. Wyoming is again using acceptable caution in establishing this time frame. Regarding Wyoming's ability to request an emergency EQC hearing, under State law, such a request can only be made in a genuine emergency situation. In other words, only an unplanned or unanticipated event justifies an emergency hearing of the EQC. The current rulemaking, while important, is neither unplanned nor unanticipated. In addition OSM understands that Wyoming is retaining the option to request an emergency EQC hearing if the need arises.

Agency Comments

The Bureau of Land Management responded by determining that the amendment as written will have no effect on BLM operations. (Administrative Record No. WY–26–6)

V. Director's Decision

Based on the above, the Director is approving Wyoming's February 28, 1994, proposed timetable for enactment of a required amendment, as revised by Wyoming's September 1, 1994, request for extension of that timetable. The timetable, as revised, will allow Wyoming to enact the required program amendments specified at 30 CFR 950.16 (bb) through (gg). The timetable, as revised, extends through November 30, 1995.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undo delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Compliance With Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface Mining, Underground mining.

Dated: December 19, 1994.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 950—WYOMING

1. The authority citation for Part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 950.16, paragraph (hh) is added to read as follows:

§ 950.16 Required program amendments.

* * * * *

(hh) By letters dated February 28, 1994, and September 1, 1994, Wyoming submitted a description of required amendments, time table for enactment, and request for additional time to complete the rulemaking for paragraphs (aa) through (gg) of this section. The request provides that Wyoming will have through November 30, 1995, to submit those required program amendments.

[FR Doc. 94–31599 Filed 12–22–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–94–153]

RIN 2115–AA97

Safety Zone; South Street Seaport, New Year's Eve Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the South Street Seaport, New Year's Eve Fireworks display in the East River, New York, on December 31, 1994, to protect the boating public from the hazards associated with fireworks exploding in the area. This event, sponsored by South Street Seaport, Inc., will take place from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Captain of the Port, New York. This regulation will temporarily close all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan, to Pier 3, Brooklyn. This safety zone will preclude all vessels from transiting this portion of the East River.

EFFECTIVE DATES: This rule is effective from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. Trabocchi, Planning and Readiness Division Officer, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and LCDR J. D. Steib, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On November 8, 1994, the Coast Guard published a noticed of proposed rulemaking (NPRM) in the **Federal Register** (59 FR 55603) concerning this regulatory action. Interested persons were requested to submit comments on or before December 8, 1994. No comments were received. A public hearing was not requested and one was not held. The Captain of the Port, New York, is promulgating this temporary final rule as proposed. Good cause exists for making this rule effective less than 30 days after **Federal Register** publication. Due to the length of the comment period deemed necessary to provide the public with adequate notice, there is insufficient time to publish this rule 30 days before the event. Making this rule effective in less than 30 days after publication is in the public interest as any delay would effectively cause cancellation of the event.

Background and Purpose

South Street Seaport, Inc., submitted an application to hold a fireworks program in the waters of the East River on December 31, 1994. Following the notice and comment period described above, the Captain of the Port, New York, now promulgates this temporary final rule as proposed and establishes a safety zone for the annual event known as the "South Street Seaport New Year's Eve Fireworks", in the waters of the East River.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone will close a portion of the East River to all vessel traffic between 11:30 p.m. on December 31, 1994, and 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation will prevent traffic from transiting this area, the effect of this regulation will not be significant for several reasons. Due to the limited duration of the event; the minimal traffic expected due to the late hour of the event and winter season; the extensive advance advisories that will be made to the maritime community to allow for the scheduling of transits before and after the event; and that pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers, the Coast Guard expects the economic impac of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–153 is added to read as follows:

§ 165.T01–153 Safety Zone; South Street Seaport, New Year's Eve Fireworks, East River, NY.

(a) *Location.* All waters of the East River, New York, south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period.* This section is effective from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Coast Guard, Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: December 15, 1994.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–31628 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–160]

RIN 2115–AA97

Safety Zone; First Night Martha's Vineyard Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Vineyard Haven Harbor, Vineyard Haven, MA, on December 31, 1994, during the annual the First Night Martha's Vineyard fireworks display. The zone will be around a barge anchored just outside the Vineyard Haven jetty. This safety zone is necessary to protect pleasure craft and persons aboard these vessels from injury due to potential hazards associated with the fireworks.

EFFECTIVE DATE: This regulation is effective between the hours of 10 p.m. to 10:45 p.m. on December 31, 1994.

FOR FURTHER INFORMATION CONTACT: LT David Dolloff, Marine Safety Field Office Cape Cod, (508) 968–6556.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT D. H. Dolloff, Project Manager, and LCDR F. J. Kenney, Project Counsel, First District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Because of the late date the Coast Guard received the application, there was not sufficient time to publish proposed rules in advance of the event. First Night Martha's Vineyard is a popular local event centered around the New Years national holiday. Delaying the event would result in its cancellation.

Background and Purpose

On December 31, 1994, First Night Martha's Vineyard will sponsor a fireworks display between the hours of 10 p.m. and 10:45 p.m. in celebration of New Years Eve. A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area of the barge over which the fireworks will be launched. The safety zone will cover an area within a 400 yard radius of the anchored fireworks barge which will be in position 41°27'36" North 70°35'48" West (approximately 300 yards north of the Vineyard Haven jetty) between the hours of 10 p.m. to 10:45 p.m. on December 31, 1994.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies of DOT is unnecessary. These regulations will be in effect for only a short period. The entities most likely to be affected are pleasure craft wishing to view the fireworks. These vessels will still be able to view the fireworks but will be required to do so at a distance of more than 400 yards from the anchored barge, which will not cause them undue hardship. The effect on commercial traffic is negligible. There is a minimal amount of commercial traffic that transmits the area. Advisories will be made to allow any such vessels to adjust their schedules.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether these regulations will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The environmental impact of this rule has been evaluated using the Coast Guard's procedures for implementing the National Environmental Policy Act (Commandant Instruction M16474.1B). Under Section 2.B.2.(e) of these procedures, it is concluded that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–160 is added to read as follows:

§ 165.T01–160 Safety Zone: First Night Vineyard Haven Fireworks Display.

(a) *Location.* The following area is a safety zone: All waters within a 400 yard radius of the anchored fireworks barge which will be in approximate position 41° 27′ 36″ North 70° 35′ 48″ West (approximately 300 yards north of the Vineyard Haven jetty).

(b) *Effective date.* This section becomes effective at 10 p.m. on December 31, 1994. It terminates at 10:45 p.m. on December 31, 1994, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: December 13, 1994.

P.A. Turlo,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 94–31627 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5127–6]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for Final Authorization for revisions to its hazardous waste program under the Resource Conservation and Recovery Act. The Environmental Protection Agency (EPA) reviewed Louisiana's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Louisiana's hazardous waste program revision subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Louisiana's application for the program revision is available for public review and comment.

DATES: This Final Authorization for Louisiana shall be effective March 8, 1995, unless EPA publishes a prior **Federal Register** (*FR*) action withdrawing this Immediate Final Rule. All comments on Louisiana's program revision application must be received by the close of business February 6, 1995.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H. B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, phone (504) 765–0617 and EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–6444. Written comments, referring to Docket Number LA–95–2, should be sent to Alima Patterson, Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR 124, 260–268, and 270.

B. Louisiana

Louisiana initially received Final Authorization, effective February 7, 1985 (see 50 FR 3348), to implement its base hazardous waste management program. Louisiana received authorization for revisions to its program effective January 29, 1990 (see 54 FR 48889), and October 25, 1991 (see 56 FR 41958), Corrections at (56 FR 51762) and effective January 23, 1995 (see 59 FR 55368–55371). On December 7, 1994, Louisiana submitted a final complete program revision application for additional program approvals. Today, Louisiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In 1983, the Louisiana Legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 et seq., the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality (LDEQ), which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State.

EPA reviewed LDEQ's application, and made an immediate final decision that LDEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization for the additional program modifications to the State. The public may submit written comments on EPA's final decision until February 6, 1995. Copies of LDEQ's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of LDEQ's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Louisiana's program revision application includes State regulatory changes that are at least equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR Parts 124, 260–262, 264, 265, 266 and 270, that were published in the FR through June 30, 1988. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Listing of Spent Pickle Liquor (062), [51 FR 19320] May 28, 1986. (Checklist 26).	Louisiana Statutes (LRS) 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §4901.C. Table 2, as amended September 20, 1994, effective September 20, 1994.
2. List (Phase 1) of Hazardous Constituents for Ground-Water Monitoring, [52 FR 25942] September 7, 1987. (Checklist 40).	LHWR §3319.F. as amended July 20, 1990; effective July 20, 1990; LHWR §3325 Table 4, as amended November 20, 1992; effective November 20, 1992; §520.D.2, as amended November 20, 1992; effective November 20, 1992.
3. Identification and Listing of Hazardous Waste (Container/Inner Liner Correction), [52 FR 26012] October 10, 1987. (Checklist 41).	LHWR §4901.E–F, as amended September 20, 1994; effective September 20, 1994; LHWR §3105. Table 1, as amended September 20, 1994; effective September 20, 1994.
4. Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, [52 FR 44314] November 18, 1987. (Checklist 43).	LHWR §3715.G.2–3, as amended July 20, 1992; effective July 20, 1992; LHWR §3719.H.2, as amended July 20, 1992; effective July 20, 1992; LHWR §4411.G.2–3, as amended July 20, 1992; effective July 20, 1992.
5. Hazardous Waste Miscellaneous Units, [52 FR 46946] December 10, 1987. (Checklist 45).	LHWR §3301.E, as amended September 20, 1994; effective September 20, 1994; LHWR §109, as amended October 20, 1994; effective October 20, 1994; LHWR §1501.A, as amended November 20, 1992; effective November 20, 1992; LHWR §1509.B.4, as amended November 20, 1992; effective November 20, 1992; LHWR §1503.B.3.a.ii, as amended November 20, 1992; effective November 20, 1992; LHWR §1529.B.9, as amended September 20, 1994; effective November 20, 1994; LHWR §3301.E, as amended September 20, 1994; effective September 20, 1994; LHWR §3507.C, as amended November 20, 1992; effective November 20, 1992; LHWR §3511.A.2, as amended December 20, 1992; effective December 20, 1992; §3515, as amended July 20, 1990; effective July 20, 1990; LHWR §3521.A.1.a–b, as amended May 20, 1990; effective May 20, 1990; LHWR §3523.B.1–2.b, as amended November 20, 1992; effective November 20, 1992; LHWR §3705.A, as amended July 20, 1992; effective July 20, 1992; LHWR §3709.A, as amended May 20, 1990, effective May 20, 1990; LHWR §3715.B, as amended July 20, 1992; effective July 20, 1992; §3201, as amended May 20, 1990; effective May 20, 1990; LHWR §3203–C.7, as amended May 20, 1990; effective May 20, 1990; LHWR §3205, as amended November 20, 1992; effective November 20, 1992; LHWR §3207, as amended November 20, 1992; effective November 20, 1992; LHWR §517.G, as amended November 20, 1992; effective November 20, 1992; LHWR §517.M, as amended November 20, 1992; effective November 20, 1992; LHWR §§534–34.E, as amended May 20, 1990; effective May 20, 1990.
6. Technical Correction; Identification and Listing of Hazardous Waste, [53 FR 13382] April 22, 1988. (Checklist 46).	LHWR §4901.E–F, as amended September 20, 1994; effective September 20, 1994; and LHWR §3105. Table 1, as amended September 20, 1994; effective September 20, 1994.

Louisiana is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that LDEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, LDEQ is granted Final Authorization to operate its hazardous waste program as revised. Louisiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA, and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize LDEQ's program and for incorporation by reference of those provisions of its Statutes and regulations that EPA will enforce under Section 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart T until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 14, 1994.

William B. Hathaway,

Acting Regional Administrator.

[FR Doc. 94-31615 Filed 12-22-94; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-3, 201-20, and 201-39

[FIRMR Amendment 3]

RIN 3090-AF04

Amendment of FIRMR Provisions Relating to FIRMR Applicability, FIRMR Bulletins, and Present Value Analysis

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This document amends the Federal Information Resources Management Regulation (FIRMR) regarding: FIRMR applicability provisions relating to the replacement of embedded Federal information processing FIP resources, the delivery of small or inconsequential quantities of FIP resources under non-FIP procurements, and the availability of guidance on interpreting FIRMR applicability provisions; the nonmandatory nature of FIRMR bulletins; and the use of OMB Circular A-94 in performing present value analysis when evaluating bids and proposals.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Horth, telephone FTS/Commercial (202) 501-0960 (v) or (202) 501-0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) This amendment was published in a notice of proposed rulemaking in the January 3, 1994 issue of the **Federal Register**. All comments were considered and, where possible, were incorporated into the amendment. Some comments, which would involve amendments beyond what was intended in these revisions, were not adopted so that this amendment could be issued as quickly as possible to allow agencies to take advantage of the new exceptions to the FIRMR. The comments that were not fully accommodated are discussed below:

(a) A number of comments related to the new $500,000 exception to FIRMR applicability for small quantities of FIP resources. Several respondents felt that the exception should be expanded by increasing the amount or basing the exception on a percentage as well as the dollar amount. Others did not have a clear understanding of the meaning of "predominantly for non-FIP resources." The language in the final rule has been modified to clarify the meaning of the exception and will provide additional flexibility. However, the intent of this exception was to capture situations where some FIP resources will be delivered in a contract but are of little consequence to the major purpose of the contract. Many such situations have been the subject of protest decisions issued by the General Services Board of Contract Appeals and an effort is being made to align the regulations with some of these decisions. The amendment should eliminate some of the situations that have created unnecessary protests. It provides broader flexibility to agencies in acquisitions of mixed requirements where the FIP resources required are only a minor portion of and do not constitute the principle purpose of a solicitation or contract, or where the FIP resources are of little consequence to the purpose of the contract. The exception applies to all FIP resources to be delivered to or acquired for use by the Government or users designated by the Government. Additional guidance will be provided in revisions to FIRMR Bulletin A-1.

(b) Suggestions were made to extend the exception for replacement of embedded FIP to other acquisitions for spare parts or upgrades. The intent of this exception extends only to replacement of embedded FIP resources that initially meet the criteria for exception from the FIRMR. Spare parts or upgrades (unless for the embedded resource) do not meet this description.

(c) Suggestions were made for expansion of the language regarding OMB Circular A-94 or for issuance of guidance. Questions have arisen regarding the mandatory nature of the Circular; its application to purchase (where payments will extend over time) of FIP resources; to services, and to evaluation of sealed bids as well as proposals for FIP resources; and the rates to be applied in specific type acquisitions. The Circular applies to FIP resources, including services. Section 8.c(4) of the Circular specifically addresses information technology requirements. The Circular is mandatory in some situations, but may not be in other situations (e.g., for some acquisitions for less than three years). The rate to be used depends on the type of analysis. An agency must, after review of the Circular, make a determination in each situation as to whether it applies and whether the use of present value factors would make a difference in final prices/costs. The intent of this amendment is to direct agencies to the Circular as a resource in evaluations of bids and proposals, since it replaces rescinded OMB Circular A-104, which was previously used. Details in the regulation could cause confusion, since the Circular may be applied differently in various situations. OMB will assist agencies with the bulletin. Agencies should provide internal guidance. FAR 7.4 contains some guidance on lease vs. purchase buys that may be helpful. GSA will consider additional guidance for FIP resources as the Acquisition Guides are updated.

(d) There were proposals that GSA provide exceptions for broad categories of equipment, such as building support systems. Exceptions for specific categories of equipment are not listed in the regulation itself. GSA will take these suggestions under consideration in making appropriate revisions in FIRMR Bulletin A-1.

(2) Explanations of the amendments follow:

(a) Part 201-1 and subpart 201-39.1 are amended to be responsive to agency concerns that the replacement of FIP resources that initially were excepted from FIRMR applicability as embedded FIP equipment should also be excepted. Since the FIP resources would be used in the same manner as used initially, the amendment grants an exception to FIRMR applicability for the replacement of any FIP equipment, software, or related supplies used in the embedded FIP equipment that has already been granted an exception under § 201-1.002-2(e), regardless of the cost of the replacement resources. This change also clarifies that the criteria for excepting embedded FIP equipment applies to an individual product and not to all the products being acquired.

(b) Part 201-1 and subpart 201-39.1 are also amended to provide an exception to FIRMR applicability for small amounts of FIP resources that will be delivered to the Government when an acquisition is primarily for other purposes and the FIP resources constitute a minimal or insignificant part of the contract. Currently, the FIRMR applies to all FIP resources delivered to a Federal agency or users designated by the agency, no matter how minimal. Given the legislative exceptions for FIP resources that are not "significant" or are "incidental to the performance of a Federal contract." GSA believes that a FIRMR exception is appropriate for acquisitions of FIP resources with a relatively low dollar value when the principal purpose of the